

In re ) Fair Hearing No. 16,636  
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Appeal of )

The petitioner appeals a decision of the Department of PATH to sanction her ANFC grant due to the failure of her children's father to cooperate with the requirements of the Reach Up program.

1. The petitioner is the mother of two small children. The children's father lived with the petitioner until recently and they received ANFC benefits as one household.

2. As part of the household's ANFC eligibility, the father was required to register with the Department of Employment and Training, which he did in February of 2000. He attended a meeting on February 1, 2000 at which he informed the employment counselor that he wanted to be self-employed as a sheetrock installer. At that time, the father and the petitioner signed a "family development plan" with DET which required him to keep weekly contact in person or by phone with his DET counselor, to create a business plan with assistance

from the DET counselor, and to send or bring monthly profit and loss statements to her.

3. The father did call on February 11 to state that he had finished one job and would start another. He was encouraged to continue this work and to keep in touch with DET. Nothing further was said at that time about the business plan because the counselor wanted him to focus on maintaining his job rather than on paperwork.

4. The father never called DET again. On April 28, 2000, the DET counselor called the petitioner and told her that the father needed to contact her about filing a business plan. The petitioner told the father but he never called the DET counselor.

5. After hearing nothing, the DET counselor called again on May 22, 2000 and again spoke with the petitioner who promised to tell the father to call about the business plan.

6. After receiving no response to the second request, the DET counselor sent a letter to the father on July 19, 2000 asking him to come in for a conciliation meeting on July 25, 2000 regarding his failure to file a business plan, to provide monthly profit and loss statements and accurate accounts of earnings and failure to maintain contact with DET. The notice advised the father that his failure to respond to the notice

would mean a sanctioning of the grant by removing his needs. No response was received to that letter and the father did not attend the appointment.

7. On July 31, 2000, the counselor notified PATH that the father had failed to cooperate with Reach Up requirements. Based upon that information, the petitioner was mailed a notice dated August 7, 2000 that the needs of the father would be removed from the ANFC grant effective September 1, 2000. The reason originally given was that the father had "quit a job, reduced his earnings or refused a job offer without good cause." That reason was amended on August 21 by a notice which stated that the reason was that the father "failed without good cause to participate in Reach Up."

8. The petitioner appealed that decision and her benefits were continued at the prior level.<sup>1</sup> The petitioner claims at that point that she called the worker and said that the children's father had moved out of her household. The worker disputes that contention and says that the petitioner objected to the Department's counting the father's income in her grant because his needs had been removed. The worker recalled that the petitioner did say there were some problems

and that the father might move out of the household. The worker said that she told the petitioner that if he did move out they would need verification of the move and asked the petitioner if she wanted to start the paperwork. She said that the petitioner told her not to do anything now and that she would let her know if he did leave. In the meantime, the worker advised the petitioner to contact DET about how the sanction could be removed. The worker's version of events is found to be more credible because of the detail and care with which her testimony was given and because it is consistent with subsequent events. It is also likely that she would have processed a change if the petitioner had given her the information she claimed. The worker had no incentive to tell anything but the truth in this matter.

9. The petitioner did not give the worker any further information until November 6, 2000. At that time the petitioner attended a regular review meeting at which time she did not include the father on her new application. The petitioner again claims that she said the father was out of the household. The worker, who had a very clear memory of the meeting, said that she asked if the father had left the

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<sup>1</sup> The petitioner was also notified on August 18, 2000 that her family income was in excess of ANFC standards and that her grant would be closed.

household and the petitioner told her no. The petitioner did not put him on the application because she did not feel it was fair to include his income if he was not getting a grant. According to the worker, she was told that he would still have to be part of the household and that his name would have to go on the application. The petitioner was asked to provide verification of his income and their shelter costs. Again, the worker's version of events is found to be more credible. She had a clear memory of the events and no incentive to tell anything but the truth.

10. Sometime later, the petitioner called the worker and said she was having difficulty getting verifications. The worker asked if the father was still in her household and the petitioner said yes but that he might go to jail in the near future.

11. The petitioner claims now that her children's father moved out in September but continued to visit them two days per week and babysit for them. He also continued to provide financial support for the children. She was vague about where he was living, sometimes with his father, sometimes with his brother. This testimony is inconsistent with statements she made to her worker and so cannot be credited. Even if it were

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That decision was put in abeyance pending the outcome of this hearing.

so, the evidence indicates that she did not report that situation to the Department at any time.

ORDER

The Department's decisions to include the petitioner's children's father's income in her ANFC eligibility calculation and to sanction the petitioner's grant by removing the needs of her children's father is upheld.

REASONS

The petitioner does not argue in this matter that her children's father did cooperate with Reach Up or that the Department wrongfully applied sanctions to him. The facts show that the father of the petitioner's children did not fulfill requirements to participate in the Reach Up program and that he offered no good cause for his failure. The regulations make it clear that a person who fails to participate in the Reach Up program without good cause "shall have his or her needs excluded in determining eligibility for and the benefit amount in ANFC." W.A.M. 2351. The regulations also make it clear that even where this sanction occurs, "[t]he income and resources of the sanctioned

individual shall be considered available to the remaining assistance group." W.A.M. 2351.

The petitioner does not argue with these regulations at this point. Her current argument is that her children's father was "absent" from the household from early September of 2000, that she reported that absence at the time and that his income, therefore, should not have been counted during September, October, November, or any subsequent months. The credible facts show that indeed the petitioner did not want to have her children's father's income counted during those months but not because he was absent from the home but rather because he was not included in the grant. Her allegations that he was out of the home appear to have arisen sometime later when she realized that her first argument was failing. There is simply no credible evidence either that the petitioner reported that her children's father was out of the home or that he was actually out of the home at any time at issue.<sup>2</sup> The Department was thus correct to count his income as available to the family in all the months at issue. As the decision of the Department comports with its regulations, the

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<sup>2</sup> Even if the petitioner's allegations could be credited, her description of her children's father's "absence" from the home does not describe a separation which seriously interrupted his functioning as a provider of

Board is bound to affirm it. Fair Hearing Rule 17, 3 VSA §  
3091(d).

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financial or physical care of his children, a prerequisite to determining  
that "absence" actually exists.